the lex fori, that for the purposes of the case in hand neither party can be injured by the presumption that the two laws are similar."

Certainly such reasoning is based upon the soundest principles of logic and policy. It places a just burden upon the proper persons. It rightfully denies them the protection of any law whose aid they are too indolent or too negligent to invoke; and yet grants them the privilege of its protection if they so desire.

CONSTITUTIONALITY OF STATE STATUTE AUTHORIZING SALE BY COURT OF A REMAINDER VESTED IN A PERSON SUI JURIS.—There are certain circumstances under which it is a well-settled rule that the Legislature has the constitutional power to authorize a change in the ownership of lands without the consent of the person who holds the title. But the title to real estate under our jurisprudence is considered as something almost sacred, and to be tampered with only in cases of private necessity or for the public good.

There are certain classes of persons who are unable to contract by reason of disability imposed by law. Infants, idiots and lunatics are absolutely powerless to convey their real property for themselves; hence it is essential that there be some person authorized to exercise this power for them.[1] If nobody had the power a large part of the land would always be tied up, consequently it is well settled that the State as *parens patriæ* may constitutionally authorize the sale or other disposition of the real estate within its borders belonging to persons under disabilities, in order to promote their interests and the interests of the State.[2]

It is now settled that the courts under legislative authority have the power to sell land owned by tenants in common, joint tenants, or co-parceners when necessary for partition even against the wishes of some of the parties,[3] and although there is conflict on the point the better rule seems to be that the legislature may authorize the sale of contingent interests in real property.[4] The New York court in *Brevoort* v. *Grace* gave utterance to the following strong dissent from the majority view: "It is further insisted that although the legislature may not have the power to authorize the sale of an estate in possession or a vested estate in expectancy of an adult without his consent, yet it can authorize the sale of a contingent estate in expectancy. I can see no reason for the distinction. An

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[1] Kneass' Appeal, 31 Pa. St. 87. The court said: "The State has a deep interest in the free alienation and rapid improvement of all real estate within her limits. The necessities of infants and lunatics often require that the power to sell should be exercised by some one."

[2] Munford *v.* Pearce, 70 Ala. 452; Davison *v.* Johonnot, 7 Metc. (Mass.) 388, 41 Am. Dec. 448.

[3] 1 MINOR, REAL PROPERTY, 1024.

[4] Linsley *v.* Hubbard, 44 Conn. 109, 26 Am. Rep. 431; Bass *v.* Roanoke Navigation & Water Power Co., 111 N. C. 439, 16 S. E. 402. *Contra,* Brevoort *v.* Grace, 53 N. Y. 245.

owner *sui juris* is equally competent to determine and manage for himself in the one case as in the other. The foundation of the power of the legislature to act in behalf of any owner is the want of capacity to act for himself and this reason no more extends to the case of a contingent than to a vested expectancy estate." It would seem that the fallacy in this argument is that the court failed to note the distinction between present vested rights and contingent interests which really amount to little more than expectancies or possibilities. It is on account of their ephemeral nature that contingent interests are less respected in the law.

But it is an entirely different matter when the Legislature attempts to authorize the sale of vested interests in real estate belonging to adults not under disability. Such legislation has almost always been declared unconstitutional by the courts.[5] After holding such a statute unconstitutional the Kentucky court said: "The court has no power to appoint a guardian for one who is *sui juris*, nor to consent for or to act for him. So long as the person is not disabled to manage the property, his or her judgment must determine the question as to whether a sale would be to his or her interest, unless in the case of tenancy in common and joint tenancy heretofore mentioned." [6]

It would seem that any statute which takes the control of one's property absolutely away from him, not in the exercise of the police power nor in the interests of any great public policy might be held void as contrary to the whole spirit of the Federal constitution. But by the weight of authority a statute cannot be declared unconstitutional unless contrary to some express provision. The courts deem it unwise to be guided by anything so elusive and elastic as the spirit which is supposed to prevade the constitution.[7]

Hence the courts in holding such statutes void base their decisions on some express provision. The Pennsylvania court put the unconstitutionality of such a statute on the ground that it was violative of the "Due Process of Law" clause, and also that it was an infringement by the legislature on the powers of the judiciary.[8] In the recent case of *Curtis* v. *Hiden*,[9] the Virginia court held such a statute unconstitutional as "an unwarrantable interference with rights of property and as denying equal protection of the laws." [10]

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[5] Ervine's Appeal, 16 Pa. St. 256, 55 Am. Dec. 499; Culberston *v.* Coleman, 47 Wis. 193, 2 N. W. 124; Gossom *v.* McFerran, 79 Ky. 236.

[6] Gossom *v.* McFerran, *supra.*

[7] Gray *v.* McLendon, 134 Ga. 224, 67 S. E. 859; Jacobson *v.* Mass., 197 U. S. 11; Brown *v.* Galveston, 97 Tex. 1, 75 S. W. 488. See Sturgis *v.* Crowinshield, 4 Wheat. 122, 202. See also Cooley's Const. Lim. 236-240.

[8] Ervine's Appeal. *supra.* [9] 84 S. E. 664.

[10] The court held that the statute was void if construed to confer upon the tenant by curtesy or in dower the right to demand a sale of the real estate where all parties are *sui juris* and the estate is vested. But that it was valid if it merely conferred the power upon the courts to order a sale where the facts set forth "would justify the sale of real estate." By this latter construction the statute is merely declaratory of the common law.

Practically the same question was decided the other way in *Lantz* v. *Massie*,[11] but the question of the constitutionality of the statute does not seem to have been raised. The later case puts Virginia in line with the great weight of authority.

[11] 99 Va. 709, 40 S. E. 50. This case is reported in 7 VA. LAW REG. 558 with a very instructive note by Dean W. M. Lile, University of Virginia.